

REVIEW OF THE AUSTRALIAN CONSUMER PRODUCT SAFETY SYSTEM DISCUSSION PAPER

*ACCI SUBMISSION
TO THE
MINISTERIAL COUNCIL ON CONSUMER AFFAIRS*

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Background

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. ACCI's members are employer organisations in all States and Territories and all major sectors of Australian industry.

Through our membership, ACCI represents over 350,000 businesses nation-wide, including the top 100 companies, over 55,000 enterprises employing between 20-100 people, and over 280,000 enterprises employing less than 20 people. This makes ACCI the largest and most representative business organisation in Australia.

Membership of ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations. A list of these members is provided in Appendix A.

Introduction

ACCI recognises that consumer protection laws, policies and practices help to build consumer confidence. This enhances the relationship between businesses and consumers in commercial transactions and results in increased business to consumer activity. Consumers must be provided with adequate information, protection and redress options concerning products and services. However, this must be balanced with the need to impose minimum compliance costs on business.

ACCI's overall objective is to achieve consumer protection policies which are consistent with the following principles:

- Capable of producing favourable consumer outcomes by ensuring that consumers are not misled, deceived or harmed as a result of products or advertising.
- Designed to make the market even more competitive by:
 - Providing no undue restrictions on market participants or the products they offer.
 - Ensuring markets are open to the widest possible participants.
 - Addressing information and transaction cost problems.
- Focused so that it provides protection to consumers in a cost-effective way without unduly impacting on the competitive process and, where it does, to be subject to a public benefit test. A cost-effective regulatory system requires:

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- A presumption in favour of minimal regulation.
- An allocation of functions amongst regulatory bodies, which minimises overlaps, duplications and conflicts.
- Any regulatory framework must have the flexibility to cope with changing institutional and product structures without losing its effectiveness.
- Policies must be evidence based, drawing on sound cross-jurisdictional data on the incidence and trends of product-related injuries and deaths as well as the effectiveness of current approaches more generally.
- The appropriate regulatory agencies should be accountable and subject to regulatory reviews of efficiency and effectiveness.

Government regulatory bodies should also recognise that industry places the highest priority on product safety matters, as any adverse consumer impact only harms business itself. The majority of businesses constantly work to ensure that products do not harm consumers. It is in their interest to do so.

The Discussion Paper identified two major areas for improvement in Australia's consumer product safety regulatory system: a desirability for the system to be more proactive and able to deal with potential safety hazards more swiftly and, secondly, the need to address the 'fragmentation' of product safety regulation across jurisdictions.

ACCI considers that further work is required to inform development of proposals to address the first issue. In particular, access to cross-jurisdictional data on incidence and trends of product-related injuries and deaths is necessary to identify the extent to which a 'problem' exists and to inform policy development. Given the lack of such data it seems difficult to argue that there is a case for a number of the proposals in the Discussion Paper, in particular the General Safety Provision (GSP).

In relation to the second issue, ACCI supports, in principle, the minimisation of overlaps, duplication and conflicts between legislation and regulations in differing jurisdictions that govern product safety and enforcement.

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Introduction of a GSP (Issues 3-6)

ACCI does not support the introduction of a GSP.

Lack of supporting evidence for a GSP

As noted in the Discussion Paper “[c]urrently, comprehensive national statistics on product related injuries and deaths are not collected in Australia”.¹ Accordingly, if no statistics are available demonstrating the number of product related injuries and deaths, then there is no primary evidence to support, or justify, the introduction of a GSP.

Emphasising the lack of primary evidence provided in the Discussion Paper to support a GSP, is the obvious success of many current Australian business practices and procedures:

- “...there are around 6,400 voluntary standards and 27 mandatory standards under the TPA”²
- “...the vast majority of recalls are voluntary and primarily the responsibility of the supplier. There is on average more than one voluntary recall of a product each day in Australia”³
- “Since 1986, approximately 6,600 voluntary recalls have been notified to the relevant Minister, while 5 compulsory recall actions have been undertaken.”⁴
- “Warning notices are not used often. The Australian Government has issued on average about one warning notice per year since 1986, and the trend is toward reduced use over time.”⁵

Clearly business is capable of responsibly monitoring and addressing product safety issues. Combined, these figures and the lack of evidence supporting the number of product related injuries and deaths clearly indicate that radical change to the current consumer protection system, in the form of a GSP, is entirely unwarranted.

Doubtful that the suggested system would be more ‘proactive’

The Discussion Paper emphasises the need for a more proactive system that prevents problems rather than reacts to problems. The majority of businesses constantly work to ensure that products do not harm consumers. It is in their interest to do so. The small number of businesses that currently cause problems or harm would

¹ Ministerial Council on Consumer Affairs, Review of the Australian Consumer Product Safety System Discussion Paper, August 2004, Commonwealth of Australia, Canberra, 2004, p. 6. See also p. 40.

² Ministerial Council on Consumer Affairs, p. 55.

³ Ministerial Council on Consumer Affairs, p. 55.

⁴ Ministerial Council on Consumer Affairs, p. 55.

⁵ Ministerial Council on Consumer Affairs, p. 53.

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still do so regardless of a GSP. Government would still need to be reactive in such circumstances. Thus it is not clear that a GSP would create a more proactive system.

Unfair regulatory impact on business, especially small business

As stated in the Discussion Paper:

...governments should strive to avoid imposing complicated rules on businesses which are costly to comply with, which make it difficult for some businesses to compete in providing goods and services to consumers, or which make it difficult for businesses to introduce new and innovative products for which consumer demand exists. Any rules that are introduced should be administered in the most efficient and effective manner possible. Government actions that fail to meet these criteria have the potential to harm consumers through increased prices, fewer choices, and a higher burden of taxation.⁶

The introduction of a GSP would impose a range of complicated and onerous rules, regulations and procedures. Not only would business have to grapple with the precise definition of what constitutes a “safe” product, but it would also have to provide greatly increased information, monitoring, corrective actions and notification procedures. The compliance costs for business would be substantial and detrimental.

ACCI’s Small Business Survey,⁷ has consistently ranked ‘business taxes and government charges’ and ‘cost of compliance with government regulations’ as the most critical issues to small business. It is clear that a GSP would impose substantial compliance costs on all business and particularly on small business. This in turn would reduce the development and introduction of new products, reducing choice and increasing costs for consumers.

Inefficient use of government and business resources

The introduction and implementation of a GSP would require the creation of new legislation, regulations and practices at a not insignificant cost to government. Simultaneously, existing legislation, regulations and practices would have to be amended, also at a not insignificant cost to government. Inevitably, the definition of a “safe” product would create ongoing legal arguments. Such arguments and related action would occur at a not insignificant cost to government and business.

⁶ Ministerial Council on Consumer Affairs, p. 13. Reiterated on pp. 19-20.

⁷ Conducted on a quarterly basis since November 1999.

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Government resources would be better directed at addressing any duplication and inefficiencies in the current system and implementing corresponding solutions.

Current consumer protection system is adequate

The current system under the Trade Practices Act and similar legislation in the states provides adequate consumer protection. The legislation is complemented by the common law. It is unnecessary to replace the system.

If a GSP is to be further explored, which ACCI does not support, any such exploration must include extensive consultation with business and rely on actual statistics. Consultation with business must ensure that proposed changes will achieve desired outcomes and will not impose undue costs on business and therefore upon consumers. It is also essential that these costs are properly quantified and their impact on Australian business and consumers is fully assessed.

Services and Second Hand Goods (Issues 7 and 8)

ACCI does not support the introduction of legislation or regulations to govern services and second-hand goods as suggested in the Discussion Paper.

Services already attract coverage by the Trade Practices Act and some state jurisdictions as highlighted by the Discussion Paper. Furthermore the common law provides recourse to injured or affected parties and thus the incentive for service providers to provide safe services. The introduction of new legislation or regulations is unnecessary. It would only serve to increase compliance costs of service providers. Industries or business should remain responsible for self-regulation and the implementation of voluntary standards where appropriate.

Regulating second hand goods would be virtually impossible given the large number of individuals and various business or charitable entities selling such goods. Industries or business should remain responsible for self-regulation and the implementation of voluntary standards where appropriate.

Consumer product safety information (Issue 9)

By and large, ACCI believes consumers are currently receiving sufficient product safety information. Retail product markets in Australia are highly developed and competitive and for the most part disclose large amounts of product information to provide consumers with clear choices on safety and other issues. It is difficult to see how an across the board government-sponsored initiative could add any value to this process. Where there are

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deficiencies in information to consumers those specific problems should be addressed case-by-case.

Reporting unsafe products and recalls (Issues 10 and 14)

ACCI opposes the imposition of any further 'one-size-fits-all' requirements on business regarding the reporting of unsafe products to government. The requirement to report voluntary recalls to government is sufficient. The statistics provided above indicate that the system is working effectively. Any further requirements for reporting would be onerous and impose substantial compliance costs on business.

A generic "unsafe" product definition would make determining when to lodge a report extremely difficult. Undoubtedly the definition would be subject to various legal interpretations, increasing costs to both government and business. It would also be impossible to apply such a generic definition to all products.

The Discussion Paper suggests that:

...businesses should be required to monitor the ongoing safety of the products they sell and report to governments about any products which: are under investigation for possible safety risks; have been associated with serious injury and death; or have been the subject of a successful product liability claim.⁸

This suggestion is exceedingly onerous and would impose substantial costs on business. If a product was reported, but later found to be safe, for example, the potential would exist for incorrect information to prejudice or disadvantage individual businesses.

ACCI also opposes the introduction of government auditing of product recalls. Again, such requirements would be onerous and impose substantial compliance costs on business. If a business has issued a recall of a product it is in their interests to ensure that they recall the entire amount. Failing to do so would potentially render the business liable to action.

Centralised electronic database (Issues 11-13)

ACCI would consider, in principle, the establishment of a centralised electronic database to achieve product safety goals. Any suggested system must be entirely funded and managed by government and impose no increased costs, through compliance or reporting, on business.

The database could include the existing records of products recalled along with a new section recording product related injuries and deaths reported by hospitals or Medical Practitioners.

⁸ Ministerial Council on Consumer Affairs, p. 38.

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If such information were freely available to business it would enhance the ability of business to implement self-regulation where necessary to address problems. However, the system would need to implement checks and balances to ensure the protection of business from detrimental impacts that would arise from inaccurate or incorrect reporting.

In order to consider the development of a database ACCI would require further and more comprehensive information about the specifics of such a system. The opportunity for consultation with business to ensure that the system will achieve desired outcomes and will not impose undue costs on business, and therefore upon consumers, is essential to our in principle consideration.

Harmonisation of product safety legislation and enforcement (Issue 16)

ACCI supports, in principle, the minimisation of overlaps, duplication and conflicts between legislation and regulations in differing jurisdictions that govern product safety and enforcement. Harmonisation of legislation and regulations presents an opportunity for a more cost efficient system for government and for business.

The existence of individual federal and state legislation governing product safety and enforcement does not provide an optimal environment for businesses operating, or wishing to operate, across jurisdictions.

However, as the Discussion Paper does not provide a detailed critique of the current system and detailed options for its improvement, ACCI would welcome the provision of a more detailed proposal in order to fully consider the implications that would arise from harmonising the current systems.

ACCI does not support, and strongly objects to, the suggestion made in the Discussion Paper to amend the TPA to transfer Ministerial administrative and enforcement decision-making powers to the ACCC. The Discussion Paper does not identify any benefits from such a transfer. Nor does it provide evidence of deficiencies in the current process.

The issuing of a Mandatory Product Recall is one of the most serious actions that can be taken against a business. Warning notices also have the potential to greatly impact upon business operations. As such the highest level of authority should be sought prior to the issuing of such recalls or notices. The Minister is the only appropriate individual to give such matters the degree of

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required consideration. Furthermore, Ministers are accountable for their actions and decisions, providing business with a degree of transparency and recourse, were such decisions disputed.

Recommendations

ACCI:

- Does not support the introduction of a General Safety Provision (GSP).
- Does not support the introduction of legislation or regulation to cover services and second-hand goods as suggested in the Discussion Paper.
- By and large, believes that consumers receive adequate product information. Where there are deficiencies in information to consumers those specific problems should be addressed case-by-case.
- Opposes the imposition of any further ‘one-size-fits-all’ requirements on business regarding the reporting of unsafe products to government and opposes the introduction of government auditing of product recalls.
- Would consider, in principle, the establishment of a centralised electronic database to achieve product safety goals, funded and managed by government.
- Supports, in principle, the minimisation of overlaps, duplication and conflicts between legislation and regulations in differing jurisdictions that govern product safety and enforcement.
- Considers it essential that any proposals are rigorously analysed to ensure that costs and benefits are identified, adequately quantified and their impact on Australian business and consumers fully evaluated.

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APPENDIX A: AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY MEMBERS

Chambers of Commerce and Industry:

ACT & Region Chamber of Commerce and Industry
Australian Business Limited
Business SA
Chamber of Commerce and Industry of Western Australia (Inc)
Chamber of Commerce Northern Territory
Commerce Queensland
Employers First™
State Chamber of Commerce (NSW)
Tasmanian Chamber of Commerce and Industry Ltd
Victorian Employers' Chamber of Commerce and Industry

National Industry Associations:

Agribusiness Employers' Federation
Association of Consulting Engineers Australia
Australian Beverages Council Ltd
Australian Consumer and Specialty Products Association
Australian Entertainment Industry Association
Australian Hotels Association
Australian International Airlines Operations Group
Australian Made Campaign Limited
Australian Mines and Metals Association
Australian Paint Manufacturers' Federation Inc
Australian Retailers' Association
Housing Industry Association
Insurance Council of Australia
Investment and Financial Services Association Ltd
Master Builders Australia Inc
Master Plumbers' and Mechanical Services Association of Australia
National Electrical and Communications Association
National Retail Association Ltd
NSW Farmers Industrial Association
Oil Industry Industrial Association
Pharmacy Guild of Australia
Plastics and Chemicals Industries Association Inc
Printing Industries Association of Australia
Restaurant & Catering Australia
Standards Australia
Victorian Automobile Chamber of Commerce